BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
WHITE MOTOR CORPORATION)

For Appellant: Cyrus A. Johnson and
Diepenbrock, Wulff & Plant
Attorneys at Law

For Respondent: Crawford H. Thomas
Chief Counsel

Lawrence C. Counts
Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of White Motor Corporation against proposed assessments of additional franchise tax in the amounts of $4,003.74, $4,692.21, and $14,026.45 for the income years 1957, 1958, and 1959, respectively.

The issue presented by this appeal is whether appellant and White Motor Company of Canada, Ltd., (hereafter "White Canada"), appellant's wholly owned subsidiary, were engaged in a unitary business thus requiring allocation of the combined income by the formula method rather than by separate accounting.

Appellant White Motor Corporation is a Delaware corporation which commenced doing business in this state in 1934. During the years in question, appellant manufactured and sold White, Reo, Autocar, and Diamond-T trucks and distributed Freightliner trailers. Appellant's business in

California involved the selling and servicing of trucks and parts that it manufactured elsewhere.

Appellant's products were sold in Canada exclusively by White Canada and the latter did no business in the United States, About 70 percent of the trucks and parts sold by White Canada were manufactured by and purchased from appellant, Both the parent and its subsidiary were controlled by a common board of directors and they had at least one common executive officer, For its services, appellant charged White Canada a 'management fee. Insurance and advertising were purchased jointly 'and there was extensive intercompany financing;

For franchise tax purposes, respondent treated appellant and White Canada as engaged in a unitary business and allocated a portion of their combined net income to California by a formula method.

Appellant contends that the operations of White Canada were not part of the concededly unitary business conducted by appellant in the United States.

Section 25101 of the Revenue and Taxation Code requires a taxpayer deriving income from sources both within and without the state to measure its California tax by the net income derived from or attributable to sources within the state. If a business is unitary in nature, the income attributable to California must be determined by a formula composed of property, payroll, sales or similar factors. (Butler Bros. v. McColgan, 17 Cal. 2d 564 [111 P.2d 334], aff'd, 315 U.S. 501 [86 L. Ed. 991]; Edison California Stores, Inc. v. McColgan, 30 Cal. 2d 472 [183 P.2d 16].)

In recent decisions which broadened the application of the unitary business concept, the California Supreme Court reaffirmed the tests to be used in ascertaining the existence of a unitary business. (Superior Oil Co, v. Franchise Tax Board, 60 Cal.. 2d 406 [34 'Cal, Rptr. 545, 386 P.2d 33]; Honolulu Oil Corp. v. Franchise Tax Board, 60 Cal. 2d 417 [34 Cal. Rptr. 552, 386 P.2d 40].) Under one test, a unitary business exists when operation of the portion of the business done within the state is dependent 'upon or contributes to the operation of the business without the state. Under another approach, a business is unitary in nature if there is unity of ownership, unity

of operation, and unity of use,

We believe that those tests *are* met in the case before us. During the years under appeal; White Canada was a wholly owned subsidiary of appellant and was controlled by the same directors as appellant; at least one executive officer was common to both the parent and the subsidiary; insurance and advertising were purchased jointly; there was extensive intercompany financing; White Canada purchased from appellant approximately 70 percent of the trucks and parts that White Canada sold; and appellant depended entirely upon White Canada to sell and service its products in Canada. Prom these facts, it is clear that appellant and White Canada were engaged in *a* unitary business,

Appellant contends, nevertheless, that the inclusion of White Canada's income in allocable unitary income is an unauthorized extension of state taxing powers.' A virtually identical argument was made and rejected in Appeal of American Can Co., Cal. St. Bd, of Equal., Nov. 19, 1958, where this board upheld the inclusion of a Canadian subsidiary's income in allocable unitary income, Appellant has not pointed to ' any specific laws or treaties that would be violated by respondent's action. Formula allocation does not tax foreign income; it is only a method to determine income attributable to California. We conclude that since the business of appellant and White Canada was unitary, the California income was properly ascertained by formula allocation of the combined net income.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in'this proceeding, and good cause appear: ing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 25667 of the Revenue and Taxation Code, that the

action of the Franchise Tax Board on the protests of White Kotor Corporation against proposed assessments of additional franchise tax in the amounts of $4,003.74, $4,692.21, and $14,026.45 for the income years 1957, 1958, and 1959, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 15th day of December, 1966, by the State Board of Equalization.

_____, Chairman

Paul R. Leake, Member

John W. Lynch, Member

Richard Nevins, Member

_____, Member

ATTEST: C. J. Raquel, Secretary